

Effective Date
May 6, 2006

NEBRASKA HEALTH AND HUMAN SERVICES
REGULATION AND LICENSURE

172 NAC 114

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 114 PRACTICE OF OCCUPATIONAL THERAPY

114-001 SCOPE AND AUTHORITY: These regulations are intended to implement the laws governing the practice of occupational therapy and set forth the procedures for licensing pursuant to Neb. Rev. Stat. §§ 71-110, 71-124.01, 71-147 to 71-161.19, 71-162, 71-6101 to 71-6123, and the Uniform Licensing Law.

114-002 DEFINITIONS

Act means Neb. Rev. Stat. §§ 71-6101 to 71-6123, known as the Practice of Occupational Therapy.

Basic Educational Program/Educational Program means:

1. A program for the education of occupational therapists which is recognized by the Department and accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association or predecessor organizations.
2. A program for the education of occupational therapy assistants which is recognized by the Department and accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association or predecessor organizations.

Approved supervised field work experience means a period of supervised field work experience at an educational institution approved by the Department and where the occupational therapist's or occupational therapy assistant's academic work was completed or which was part of a training program approved by the educational institution. A minimum of six months of supervised field work experience will be required for an occupational therapist and a minimum of two months of supervised field work experience is required for an occupational therapy assistant.

Association means a recognized national or state association for occupational therapy.

Attest/Attestation means that the individual declares that all statements on the application/petition are true and complete.

Audit means the selection of licensees for verification of satisfactory completion of the continuing education requirements of the act during the biennium.

Board means the Board of Occupational Therapy Practice.

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Certified occupational therapy assistant means a person who is certified pursuant to guidelines established by the National Board for Certification in Occupational Therapy (NBCOT).

Completed application means an application with all of the information requested on the application filled in, fees, and all required documentation submitted.

Consultation or in association with means providing professional advice.

Continuing education means planned, organized learning activities designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

Continuing education activity means the various methods in which a licensee can obtain the necessary continuing education for license renewal.

Deep thermal agent modalities means therapeutic ultrasound and phonophoresis. Deep thermal agent modalities do not include the use of diathermy or lasers.

Department means the Department of Health and Human Services Regulation and Licensure.

Director means the Director of Regulation and Licensure or the Chief Medical Officer if one has been appointed pursuant to Neb. Rev. Stat. § 81-3201, for performance of the duties set out in that statute.

Electrotherapeutic agent modalities means neuromuscular electrical stimulation, transcutaneous electrical nerve stimulation, and iontophoresis. Electrotherapeutic agent modalities do not include the use of ultraviolet light.

Hour as it relates to continuing education means at least 60 minutes of participation in an organized learning experience otherwise known as a "contact hour."

1. One academic semester hour is equal to 15 contact hours. Thus an approved three credit hour course would provide 45 contact hours of continuing education credit.
2. One academic quarter hour is equal to ten contact hours. Thus an approved three credit hour course would provide 30 contact hours of continuing education credit.

Inactive license means the voluntary termination of the right or privilege to practice as a licensed occupational therapist or occupational therapy assistant. The licensee retains the right or privilege to represent himself/herself as having an inactive license.

Lapsed license means the voluntary termination of the right or privilege to represent oneself as a licensed person and to practice as a licensed occupational therapist or occupational therapy assistant.

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Licensure examination means the National Board for Certification in Occupational Therapy (NBCOT) Examination administered by the Professional Examination Service.

Mechanical devices means intermittent compression devices. Mechanical devices do not include devices to perform spinal traction.

NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 114.

National association means the American Occupational Therapy Association or equivalent organization.

Occupational therapist means a person holding an active license as an occupational therapist.

Occupational Therapist Registered means a person who is certified pursuant to guidelines established by the National Board for Certification in Occupational Therapy (NBCOT).

Occupational therapy means the use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging process in order to maximize independence, prevent disability, and maintain health. Occupational therapy encompasses evaluation, treatment, and consultation. Occupational therapy may include teaching daily living skills, developing perceptual-motor skills and sensory integrative functioning, developing prevocational capacities, designing, fabricating, or applying selected orthotic and prosthetic devices or selective adaptive equipment, using specifically designed therapeutic media and exercises to enhance functional performance, administering and interpreting tests such as manual muscle and range of motion, and adapting environments for the handicapped.

Occupational therapy aide means a person who assists in the practice of occupational therapy, who works under the supervision of an occupational therapist, and whose activities require an understanding of occupational therapy but do not require professional or advanced training or licensure.

Occupational therapy assistant means a person holding an active license as an occupational therapy assistant.

Official means issued by and under the original seal of the issuing institution.

Onsite means the location where the occupational therapy assistant is providing occupational therapy services.

Pattern of negligent conduct means a continued course of negligent conduct in performing the duties of occupational therapy.

Physical agent modalities means modalities that produce a biophysiological response through the use of water, temperature, sound, electricity, or mechanical devices.

Superficial thermal agent modalities means hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling technologies.

Supervision means the process by which the quantity and quality of work of an occupational therapy assistant is monitored. Supervision means the directing of the authorized activities of an occupational therapy assistant by a licensed occupational therapist and will not be construed to require the physical presence of the supervisor when carrying out assigned duties.

Treatment plan means a written statement setting forth the goals, method of treatment, and time frame for goal achievement.

Verified means sworn to before a Notary Public.

114-003 REQUIREMENTS FOR ISSUANCE OF LICENSE AND TEMPORARY PERMITS: Any person who wishes to represent himself/herself as a licensed occupational therapist or a licensed occupational therapy assistant after July 10, 1984 must obtain a license or temporary permit. The criteria for issuance of licenses and permits, and the documentation required by the Department and the Board are set forth below.

114-003.01 Licensure of an Occupational Therapist

114-003.01A An applicant for a license to practice as an occupational therapist on the basis of examination must:

1. Have successfully completed the academic requirements of an educational program for occupational therapists;
2. Have successfully completed a minimum of six months of approved supervised field work experience at the educational institution approved by the Department where the applicant's academic work was completed or which is part of a training program approved by such educational institution;
3. Have passed the licensure examination with a scaled score of 450; and
4. Submit to the Department:
 - a. An official transcript showing completion of an educational program for occupational therapists and showing completion of approved supervised field work experience;
 - b. Official documentation of passing the examination;
 - c. A complete application, on a form provided by the Department, a copy of which is attached as Attachment A and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment A or by using an

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alternate format, which s/he prefers. Only applications which are complete will be considered; and

- d. Attestation by the applicant:
 - (1) That s/he has not practiced in Nebraska prior to the application for a license; or
 - (2) To the actual number of days practiced in Nebraska prior to the application for a license; and
 - e. The required license fee.
- 5. The Department will act within 150 days upon all completed applications for licensure.
 - 6. When a license will expire within 180 days after its initial issuance date, the Department will collect \$26, and the license will be valid until the next subsequent renewal date.
 - 7. Administrative Penalty/Other Action: An individual who practices prior to issuance of a license, is subject to assessment of an administrative penalty under 172 NAC 114-014 or such other action as provided in the statutes and regulations governing the license.

114-003.01B An applicant for a license to practice as an occupational therapist on the basis of experience and certification by a National Association as a registered occupational therapist must:

- 1. Have actively practiced occupational therapy for at least one year of the five years immediately prior to July 10, 1984;
- 2. Have obtained certification as a registered occupational therapist from the American Occupational Therapy Certification Board; and
- 3. Submit to the Department:
 - a. A complete application, on a form provided by the Department, a copy of which is attached as Attachment A and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment A or by using an alternate format, which s/he prefers. Only applications that are complete will be considered;
 - b. Official documentation of certification as a registered occupational therapist by the American Occupational Therapy Certification Board;
 - c. Official documentation about employment showing practice in good standing as an occupational therapist for at least one year of the five years immediately prior to July 10, 1984, on a form provided by the

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Department, a copy of which is attached as Attachment A1 and incorporated into these regulations pursuant to 172 NAC 114; and

d. Attestation by the applicant:

- (1) That s/he has not practiced in Nebraska prior to the application for a license; or
- (2) To the actual number of days practiced in Nebraska prior to the application for a license; and

e. The required license fee.

4. The Department will act within 150 days upon all completed applications for licensure.
5. When a license will expire within 180 days after its initial issuance date, the Department will collect \$26, and the license will be valid until the next subsequent renewal date.
6. Administrative Penalty/Other Action: An individual who practices prior to issuance of a license, is subject to assessment of an administrative penalty pursuant to 172 NAC 114-014 or such other action as provided in the statutes and regulations governing the license.

114-003.02 Licensure of an Occupational Therapy Assistant

114-003.02A An applicant for a license to practice as an occupational therapy assistant on the basis of examination must:

1. Have successfully completed the academic requirements of an educational program for occupational therapy assistants;
2. Have successfully completed a minimum of two months of an approved supervised field work experience at the educational institution approved by the Department and where the applicant's academic work was completed or which is part of a training program approved by the educational institution;
3. Have passed the licensure examination with a scaled score of 450; and
4. Submit to the Department:
 - a. An official transcript showing completion of an educational program for occupational therapy assistants and showing completion of approved supervised field work experience;
 - b. Official documentation of passing the examination;

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- c. A complete application, on a form provided by the Department, a copy of which is attached as Attachment A and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment A or by using an alternate format, which s/he prefers. Only applications which are complete will be considered; and
 - d. Attestation by the applicant:
 - (1) That s/he has not practiced in Nebraska prior to the application for a license; or
 - (2) To the actual number of days practiced in Nebraska prior to the application for a license; and
 - e. The required license fee.
- 5. The Department will act within 150 days upon all completed applications for licensure.
 - 6. When a license will expire within 180 days after its initial issuance date, the Department will collect \$26, and the license will be valid until the next subsequent renewal date.
 - 7. Administrative Penalty/Other Action: An individual who practices prior to issuance of a license, is subject to assessment of an administrative penalty pursuant to 172 NAC 114-014 or such other action as provided in that statutes and regulations governing the license.

114-003.02B An applicant for a license to practice as an occupational therapy assistant on the basis of experience and certification by a National Association as a certified occupational therapy assistant must:

- 1. Have actively practiced occupational therapy for at least one year of the five years immediately prior to July 10, 1984;
- 2. Have obtained certification as a Certified Occupational Therapy Assistant from the American Occupational Therapy Certification Board; and
- 3. Submit to the Department:
 - a. A complete application, on a form provided by the Department, a copy of which is attached as Attachment A and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment A or by using an alternate format, which s/he prefers. Only applications that are complete will be considered;

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- b. Official documentation of certification as a Certified Occupational Therapy Assistant by the American Occupational Therapy Certification Board;
 - c. Official documentation of employment showing practice in good standing as an occupational therapy assistant for at least one year of the five years immediately prior to July 10, 1984, on a form provided by the Department, a copy of which is attached as Attachment A1 and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment A1 or by using an alternate format, which s/he prefers;
 - d. Attestation by the applicant:
 - (1) That s/he has not practiced in Nebraska prior to the application for a license; or
 - (2) To the actual number of days practiced in Nebraska prior to the application for a license; and
 - e. The required license fee; and
- 4. The Department will act within 150 days upon all completed applications for licensure.
 - 5. When a license will expire within 180 days after its initial issuance date, the Department will collect \$26, and the license will be valid until the next subsequent renewal date.
 - 6. Administrative Penalty/Other Action: An individual who practices prior to issuance of a license, is subject to assessment of an administrative penalty under 172 NAC 114-014 or such other action as provided in the statutes and regulations governing the license.

114-003.03 License Based on a License Issued in Another Jurisdiction: An applicant for a license to practice as an Occupational Therapist or Occupational Therapy Assistant on the basis of licensure in another jurisdiction must:

- 1. Provide proof of current licensure as an occupational therapist or occupational therapy assistant in another jurisdiction;
- 2. Provide documentation that the standards for licensure as an occupational therapist or occupational therapy assistant in the other jurisdiction are substantially equivalent to the requirements for licensure of the Occupational Therapy Practice Act;
- 3. Submit to the Department:

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- a. A complete application on a form provided by the Department, a copy of which is attached as Attachment A, and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment A or by using an alternate format, which s/he prefers. Only applications which are complete will be considered; and
 - b. Attestation by the applicant:
 - (1) That s/he has not practiced in Nebraska prior to the application for a license; or
 - (2) To the actual number of days practiced in Nebraska prior to the application for a license; and
 - c. The required licensure fee.
4. Have the licensing or certifying agency submit to the Department:
- a. A certification that the applicant is duly licensed or certified, that his/her license or certificate has never been suspended or revoked, and that so far as the record of the agency is concerned, the applicant is entitled to its endorsement, on a form provided by the Department, a copy of which is attached as Attachment A2, and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment A2 or by using an alternate format, which s/he prefers;
 - b. The nature of disciplinary actions, if any, taken against the applicant's license or certificate;
 - c. The date of the applicant's license or certificate;
 - d. The name of the examination on which licensure was based;
 - e. The score attained on the examination; and
 - f. Documentation of the requirements for licensure or certification in the other jurisdiction which are currently in effect and which were in effect at the time the license was issued.
5. The Department must review the documents submitted to determine if the applicant is currently licensed in the other jurisdiction and if such licensure was based upon standards which are substantially equivalent to the requirements for licensure of the Occupational Therapy Practice Act.
6. The Department will act within 150 days upon all completed applications for licenses.

7. When a license will expire within 180 days after its initial issuance date, the Department will collect \$26, and the license will be valid until the next subsequent renewal date.
8. Administrative Penalty/Other Action: An individual who practices prior to issuance of a license, is subject to assessment of an administrative penalty under 172 NAC 114-014 or such other action as provided in the statutes and regulations governing the license.

114-003.04 Temporary Permit: A temporary permit may be issued to an applicant who has met all requirements for licensure pursuant to 172 NAC 114-003.01 or 172 NAC 114-003.02, except for passing the licensure examination, and who has not previously taken the licensure examination. Such applicant must:

1. Submit to the Department:
 - a. A complete application on a form provided by the Department, a copy of which is attached as Attachment B and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment B or by using an alternate format, which s/he prefers. Only applications which are complete will be considered;
 - b. An official transcript showing completion of an educational program for occupational therapists or occupational therapy assistants and completion of approved supervised field work experience;
 - c. Attestation by the applicant:
 - (1) That s/he has not practiced in Nebraska prior to the application for a license; or
 - (2) To the actual number of days practiced in Nebraska prior to the application for a license; and
 - d. The required fee.
2. The temporary permit is valid until the date the results of the licensure examination are available to the Department for the first examination administered after the issuance of the temporary permit.
3. The Department will act within 150 days upon all completed applications for a temporary permit.
4. Administrative Penalty/Other Action: An individual who practices prior to issuance of a license, is subject to assessment of an administrative penalty under 172 NAC 114-014 or such other action as provided in the statutes and regulations governing the license.

114-003.05 Extension of Temporary Permit: A temporary permit holder who was unable to take the licensure examination may apply for an extension of his/her temporary permit.

114-003.05A An applicant for extension of a temporary permit must:

1. Provide documentation showing good cause, which includes but is not limited to: illness, active military service, or other circumstances which prevented the applicant from taking the licensure examination; and
2. Submit to the Department:
 - a. A complete application on a form provided by the Department, a copy of which is attached as Attachment C and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment C or by using an alternate format, which s/he prefers. Only applications which are complete will be considered; and
 - b. A verified copy of military orders delineating dates of active duty;
 - c. A statement from an attending physician stating the general nature of the illness or injury and the recovery period;
 - d. Documentation of other circumstances which prohibited the taking of the licensure examination.

114-003.05B An applicant is ineligible for an extension if s/he:

1. Failed the licensure examination; or
2. Held a temporary occupational therapy permit for one year.

114-003.05C The Department may, upon recommendation of the Board, grant or deny an application for extension of a temporary permit.

114-003.05C1 When the Department determines to deny an application for extension of a temporary permit, it will send to the applicant by certified mail a notice setting forth the reasons for the denial determination.

114-003.05C2 The applicant has 30 days from the date of receipt of the denial notice to make a request to the Department for an appeal. The appeal must be conducted pursuant to 184 NAC 1, Rules of Practice and Procedure for the Department.

114-003.05C3 The Department will issue at the conclusion of the appeal under 184 NAC 1, a final order setting forth the results of the appeal.

114-003.05D Failure to submit the required documentation will result in automatic rejection of the application for extension.

114-003.05E Falsification of any information submitted for extension of a temporary permit will require the Department to refuse to grant an extension of a temporary permit.

Such refusal is pursuant to Neb. Rev. Stat. § 71-6111 and 184 NAC 1.

114-004 EXAMINATION ELIGIBILITY

114-004.01 To be eligible to take the licensure examination, an applicant must have met all the requirements for licensure that are pursuant to 172 NAC 114-003.01 or 172 NAC 114-003.02 except passage of such examination.

114-004.02 To take the examination, an applicant must submit a complete examination application form and fee to: NBCOT Testing Office, Professional Examination Service, 475 Riverside Drive, New York, NY 10115 or register online at www.nbcot.org

114-005 REQUIREMENTS FOR CERTIFICATION TO APPLY PHYSICAL AGENT MODALITIES:

In order to apply physical agent modalities, a licensed occupational therapist or licensed occupational therapy assistant must be certified by the Department. Any person who was practicing as (a) an occupational therapist and administering physical agent modalities or (b) an occupational therapy assistant setting up and implementing superficial thermal agent modalities prior to July 16, 2004 may continue to administer the modalities until July 1, 2006. After July 1, 2006, any person who wishes to administer the modalities must obtain certification pursuant to Neb. Rev. Stat. § 71-6122. Physical agent modalities may be used by occupational therapy practitioners when used as an adjunct to/or in preparation for purposeful activity to enhance occupational therapy performance. The occupational therapy practitioners must have documented evidence of possessing the theoretical background and technical skills for safe and competent use.

114-005.01 Certification for a Licensed Occupational Therapist to Apply Physical Agent Modalities: A licensed occupational therapist must obtain a certification to apply superficial thermal agent modalities, deep thermal agent modalities, or electrotherapeutic agent modalities, or a combination thereof. The criteria for issuance of a certification to apply physical agent modalities and the documentation required by the Department and the Board are set forth below.

114-005.01A Superficial Thermal Agent Modalities: To obtain a certification to apply superficial thermal agent modalities, a licensed occupational therapist must:

1. Successfully complete a minimum of six hours of Board approved training or its equivalent and pass an end of the course written or computer-based examination approved by the Board which tests competency in the use of superficial thermal agent modalities. The training must include the following:
 - a. Biophysical and biophysiological changes which occur with cryotherapy;
 - b. Indications, contraindications and precautions for the application of cold agents;

- c. Clinical reasoning involved in the application of cold agents;
 - d. Commonly used types of cold agents;
 - e. Application procedures for each cold modality;
 - f. Definition of the term superficial thermal agent;
 - g. Differentiation between the two commonly used methods of heat transfer: conduction and convection;
 - h. The four biophysical effects of heat;
 - i. The physiologic response to tissue secondary to temperature elevation;
 - j. Differentiation between mild, moderate and vigorous dosages of heat;
 - k. Indications, precautions, and contraindications that should be considered when using superficial thermal agents;
 - l. Proper clinical applications for hot packs, paraffin bath, fluidotherapy, whirlpool, and contrast bath;
 - m. Guidelines for educating the client and/or family in the purpose, benefit and potential risk(s) of the modality; and
 - n. Universal precautions, sterile techniques, infection control, and the use of modalities; OR
- 2. Be certified as a hand therapist by the Hand Therapy Certification Commission or other equivalent entity recognized by the Board. Any occupational therapist who bases their certificate on their hand therapist certification will receive certification for all three levels of physical agent modalities; OR
 - 3. Have a minimum of five years of experience in the use of the physical agent modality and pass the examination approved by the Board on the physical agent modality pursuant to 172 NAC 114-005.09; OR
 - 4. Successfully complete education during a basic educational program which includes demonstration of competencies for application of the physical agent modality.

114-005.01B Deep Thermal Agent Modalities: To obtain a certification to apply deep thermal agents, a licensed occupational therapist must:

- 1. Successfully complete a minimum of 12 hours of Board approved training or its equivalent and pass an end of the course written or computer-based examination and a practical examination approved by the Board which tests competency in the use of deep thermal agent modalities. The training must include the following:
 - a. Theory and rationale for the application of therapeutic ultrasound;
 - b. Differentiation between the parameters for therapeutic ultrasound;
 - c. Current research trends in the utilization of ultrasound;
 - d. Clinical decision making in the determination of the appropriate treatment parameters for ultrasound;
 - e. Clinical procedures for the application of ultrasound;

- f. Safe use of ultrasound, contraindications and precautions for treatment ; and
 - g. Methods for maximizing therapeutic effect in the use of phonophoresis as a physical agent modality; OR
- 2. Be certified as a hand therapist by the Hand Therapy Certification Commission or other equivalent entity recognized by the Board. Any occupational therapist who bases their certificate on their hand therapist certification will receive certification for all three levels of physical agent modalities; OR
- 3. Have a minimum of five years of experience in the use of the physical agent modality and pass the examination approved by the Board on the physical agent modality pursuant to 172 NAC 114-005.09; OR
- 4. Successfully complete education during a basic educational program which includes demonstration of competencies for application of the physical agent modality.

114-005.01C Electrotherapeutic Agent Modalities: To obtain a certification to apply electrotherapeutic agent modalities, a licensed occupational therapist must:

- 1. Successfully complete a minimum of 22 hours of Board approved training or its equivalent and pass an end of the course written or computer-based examination and a practical examination approved by the Board which tests competency in the use of electrotherapeutic agent modalities. The training must include the following:
 - a. Available parameters of electrical stimulation devices and the principles and concepts of electricity;
 - b. Physiological effects of electrical stimulation;
 - c. Therapeutic goals of electrical therapy;
 - d. Physiological events associated with electrical stimulation;
 - e. Distinguishing characteristic and indications and contraindications of electrical stimulation;
 - f. Physiological effects of various parameters of electrical stimulation (voltage, type, dosage, duty cycle, etc.);
 - g. Therapeutic relationship of electrotherapy with other therapeutic procedures;
 - h. Clinical application of electrical stimulation in rehabilitation;
 - i. Clinical reasoning process used to determine selection of Neuromuscular Electrical Stimulation (NMES) and appropriate parameters;
 - j. Parameters of therapeutic electrical currents;
 - k. Biophysiological responses to electrical currents;
 - l. Indications and contraindications for NMES use;
 - m. Appropriate electrode placement for treatment protocols;
 - n. Clinical applications for iontophoresis;
 - o. Definition and differentiation of the clinical application of iontophoresis

- from phonophoresis;
 - p. Biophysiology and mechanism related to transdermal delivery of medication;
 - q. Common medications used in iontophoresis and their pharmacology;
 - r. Clinical decision making regarding iontophoresis, indications and precautions;
 - s. The processes in pharmacokinetics: absorption, distribution, and metabolism;
 - t. The processes of pharmacodynamics as it pertains to routine drugs used in phonophoresis and iontophoresis;
 - u. Effects of physical agents, exercise, and manual techniques on pharmacokinetics; and
 - v. The aging process as it relates to pharmacokinetics; OR
2. Be certified as a hand therapist by the Hand Therapy Certification Commission or other equivalent entity recognized by the Board. Any occupational therapist who bases their certificate on their hand therapist certification will receive certification for all three levels of physical agent modalities; OR
 3. Have a minimum of five years of experience in the use of the physical agent modality and pass the examination approved by the Board on the physical agent modality pursuant to 172 NAC 114-005.09; OR
 4. Successfully complete education during a basic educational program which includes demonstration of competencies for application of the physical agent modality.

114-005.01D Physical Agent Modality Certifications: To obtain one or more of the physical agent modality certifications, a licensed occupational therapist must submit the following to the Department:

1. A complete application on a form provided by the Department, a copy of which is attached as Attachment D, and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment D or by using an alternate format, which s/he prefers. Only applications which are complete will be considered; and
2. Documentation of:
 - a. A course in superficial, deep or electrotherapeutic physical agent modalities pursuant to 172 NAC 114-005.01A Item 1; 172 NAC 114-005.01B Item 1; or 172 NAC 114-005.01C Item 1; OR
 - b. A certification from the Hand Therapy Certification Commission or other equivalent entity recognized by the Board. Any occupational therapist who bases their certificate on their hand therapist certification will receive certification for all three levels of physical agent modalities; OR
 - c. A passing score of 75% or better on the Nebraska Physical Agent Modalities Testing Service examination for each physical agent Modality

in which certification is being sought; and completion of Attachment D1, a copy of which is attached and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment D1 or by using an alternate format which s/he prefers. Only applications which are complete will be considered; OR

- d. Successfully completing education during a basic educational program which includes demonstration of competencies for application of the physical agent modality and completion of Attachment D2, a copy of which is attached and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment D2 or by using an alternate format which s/he prefers. Only applications which are complete will be considered;
3. Attestation by the applicant:
 - a. That s/he has not practiced in Nebraska prior to the application for a certificate; or
 - b. To the actual number of days practiced in Nebraska prior to the application for a certificate; and
4. The required fee.
5. The Department will act within 150 days upon all completed applications for certification.
6. Administrative Penalty/Other Action: An individual who practices prior to issuance of a certificate except as pursuant to 172 NAC 114-005, is subject to assessment of an administrative penalty pursuant to 172 NAC 114-014 or such other action as provided in that statutes and regulations governing the certificate.

114-005.02 Certification for a Licensed Occupational Therapy Assistant to Apply Superficial Thermal Agent Modalities: A licensed occupational therapy assistant may only obtain a certification to apply superficial thermal agent modalities. The criteria for issuance of a

certification to apply superficial thermal agents and the documentation required by the Department and the Board are set forth below.

114-005.02A Superficial Thermal Agent Modalities: To obtain a certification to apply superficial thermal agents, a licensed occupational therapy assistant must:

1. Successfully complete a minimum of six hours of Board approved training or its equivalent and pass an end of the course written or computer-based examination approved by the Board which tests competency in the use of superficial thermal agent modalities. The training must include the following:
 - a. Biophysical and biophysiological changes which occur with cryotherapy;
 - b. Indications, contraindications and precautions for the application of cold

- agents;
- c. Clinical reasoning involved in the application of cold agents;
 - d. Commonly used types of cold agents;
 - e. Application procedures for each cold modality;
 - f. Definition of the term superficial thermal agent;
 - g. Differentiation between the two commonly used methods of heat transfer: conduction and convection;
 - h. The four biophysical effects of heat;
 - i. The physiologic response to tissue secondary to temperature elevation;
 - j. Differentiation between mild, moderate and vigorous dosages of heat;
 - k. Indications, precautions, and contraindications that should be considered when using superficial thermal agents;
 - l. Proper clinical applications for hot packs, paraffin bath, fluidotherapy, whirlpool, and contrast bath;
 - m. Guidelines for educating the client and/or family in the purpose, benefit and potential risk(s) of the modality; and
 - n. Universal precautions, sterile techniques, infection control, and the use of modalities; OR
- 2. Have a minimum of five years of experience in the use of superficial thermal agent modalities and pass the examination approved by the Board on superficial thermal agent modalities pursuant to 172 NAC 114-005.09; OR
 - 3. Successfully complete education during a basic educational program which includes demonstration of competencies for application of superficial thermal agent modalities.

114-005.02B To obtain superficial thermal agent modality certification, an occupational therapy assistant must submit the following to the Department:

- 1. A complete application on a form provided by the Department, a copy of which is attached as Attachment D, and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment D or by using an alternate format, which s/he prefers. Only applications which are complete will be considered;
- 2. Documentation of:
 - a. A course in superficial thermal agent modalities pursuant to NAC 114-005.02A Item 1; OR
 - b. A passing score of 75% or better on the Nebraska Physical Agent Modalities Testing Service Examination titled Superficial Thermal Agents Test and completion of Attachment D1, a copy of which is attached and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment D1 or by using an alternate format which s/he prefers. Only applications which are complete will be considered; OR

- c. Successfully completing education during a basic educational program which includes demonstration of competencies for application of the physical agent modality and completion of Attachment D2, a copy of which is attached and incorporated into these regulations pursuant to 172 NAC 114. At the option of the applicant, s/he may apply by filling out Attachment D2 or by using an alternate format which s/he prefers. Only applications which are complete will be considered.
3. Attestation by the applicant:
 - a. That s/he has not practiced in Nebraska prior to the application for a certificate; or
 - b. To the actual number of days practiced in Nebraska prior to the application for a certificate; and
4. The required fee.
5. The Department will act within 150 days upon all completed applications for licensure.
6. Administrative Penalty/Other Action: An individual who practices prior to issuance of a certificate except as pursuant to 172 NAC 114, is subject to assessment of an administrative penalty pursuant to 172 NAC 114-014 or such other action as provided in that statutes and regulations governing the certificate.

114-005.02C The set up and implementation of a superficial thermal agent modality by an occupational therapy assistant must only be done under the onsite supervision of an occupational therapist certified to administer superficial thermal agent modalities.

114-005.02D An occupational therapist must not delegate evaluation, reevaluation, treatment planning, and treatment goals for physical agent modalities to an occupational therapy assistant.

114-005.03 The Department will issue to each person who meets the requirements for a physical agent modality a certificate to administer physical agent modalities.

114-005.04 Each certificate-holder must keep the credential available in the office or place in which s/he practices, and show proof of the credential upon request.

114-005.05 The certification to apply physical agent modalities will not expire.

114-005.06 The Department with the advice of the Board may discipline or deny a certificate for any of the grounds pursuant to 172 NAC 114-008.

114-005.07 Approval of Physical Agent Modality Courses: For a physical agent modality course to be approved by the Board, the course must meet the requirements pursuant to 172 NAC 114-005.01A Item 1, 172 NAC 114-005.01B Item 1, 172 NAC 114-005.01C Item 1 or 172 NAC 114-005.02A Item 1 and the course provider must submit the following:

1. A complete application on a form provided by the Department, a copy of which is attached as Attachment E, and incorporated into these regulations pursuant to 172

NAC 114. At the option of the applicant, s/he may apply by filling out Attachment E or by using an alternate format, which s/he prefers. Only applications which are complete will be considered;

2. A course outline that includes the objectives of the course;
3. An example of the end of course examination;
4. Instructor(s) curriculum vitae;
5. A sample of an official certificate of attendance or transcript
The certificate of attendance must be signed by the provider and the certificate or transcript must contain the following information:
 - a. Name of course;
 - b. Types of modalities that the course covers, i.e. superficial, electrotherapeutic, deep thermal;
 - c. Date of course;
 - d. Provider of course;
 - e. Contact hours completed;
 - f. Name of person attending the course;
 - g. The score received on the end-of-course examination; and
6. A description of the practicum procedures for the deep thermal and electrotherapeutic training, including the tool used to assess the candidate's competency.

114-005.07A The approval of a course provider found to have issued a certificate of course completion to an individual who did not complete a course will be revoked.

114-005.07B Providers must agree that employees of the Department and/or its designees, in an official capacity, may audit classroom course instruction, course materials, instructors' presentations, course records, records of examination, attendance rosters and other aspects of instruction. These auditors will not be hindered, obstructed, delayed, prevented or interfered with while conducting or attempting to conduct an audit. Audits will be conducted with a minimum of disruptions. Providers agree that auditors may attend any Board- approved course offered for the purpose of the audit without paying any fee. Providers grant

the Department and/or its designees the right to audit records at the premises of the provider or at the physical location of the records.

114-005.07C Providers must keep all records of attendance, records of examination, course records and requests for duplicate course completion certificates on file for five years. These records must be available to the Department upon request.

114-005.07D Once approved, a course may not be substantially altered without a new application being submitted to the Board. A substantial alteration is any change that would modify the content or time allocations or would change any of the course topics.

114 005.07E No course may be advertised or otherwise promoted as appropriate for Nebraska physical agent modality certification until it has been approved by the

Board. Advertising a course as being offered for physical agent modality certification before approval of the course is grounds for disqualification as a provider.

114-005.07F The Board will semiannually develop and revise the list of approved physical agent modality certification courses, beginning with the effective date of these regulations, and will act within 150 days of all approved course applications.

114-005.07G Approved courses must be open to all licensees.

114-005.08 Certification Examination: Any occupational therapist or occupational therapy assistant having a minimum of five years of experience with physical agent modalities must pass the certification examination.

114-005.08A Certification Examination Procedures: The Nebraska Physical Agent Modalities Testing Service examinations will be administered by Physical Agent Modalities Practitioner Credentialing Agency (PAMPCA, LLC), 627 Crofton Park Lane, Franklin TN 37069-6515, (866) 341-4106 or (615) 794-4106. The superficial thermal agents test is the only Examination occupational therapy assistants are eligible to take. To register for an examination, the applicant must register online at www.pampca.org for the Nebraska Physical Agent Modalities Testing Service Examination and select one of the following five testing options:

1. Superficial Thermal Agents Test;
2. Deep Thermal Agents Test;
3. Superficial and Deep Thermal Agents Test;
4. Electrotherapeutic Agents Test; or
5. Comprehensive Physical Agents Modalities Test (includes Superficial, Deep and Electrotherapeutic Agents Tests).

If an applicant fails to attain a passing score of 75%, the applicant will be allowed to take a second test. If an applicant fails to attain a passing score on the second attempt, the applicant will not be eligible to receive the physical agent modality certification based on five year's experience and will need to obtain their certification through a Board approved training course pursuant to 172 NAC 114-005.07, 172 NAC 114.005.01A, 172 NAC 114-005.01B, 172 NAC 114-005.01C, or 172 NAC 114.005.02A.

114.005.08B Examination Results: The applicant will receive a letter from PAMPCA informing them of their examination results upon the completion of one or a combination of one of the Nebraska Physical Agent Modalities Testing Service Examinations.

114-006 RENEWAL REQUIREMENTS FOR OCCUPATIONAL THERAPIST AND OCCUPATIONAL THERAPY ASSISTANT LICENSES: All licenses issued by the Department pursuant to the Act and 172 NAC 114 expire on August 1 of each even-numbered year.

114-006.01 Renewal Process: Any licensee who wishes to renew his/her license must:

1. Meet continuing education requirements pursuant to 172 NAC 114-010;
2. Pay the renewal fee pursuant to 172 NAC 114-011;

3. Respond to the following questions:

- a. Has your license in any health care profession in another state been revoked, suspended, limited, or disciplined in any manner?
- b. Have you been convicted of a misdemeanor or a felony?

These questions related to the time period since the last renewal of the license or during the time period since initial licensure in Nebraska if such occurred within the two years prior to the expiration date; and

4. Cause to be submitted to the Department:

- a. The renewal notice;
- b. The renewal fee; and
- c. Attestation of completing 20 hours of continuing education for Occupational Therapists and 15 hours for Occupational Therapy Assistants, earned within 24 months of the date of expiration or application for waiver of continuing competency requirements. Attestation to meeting continuing competency requirements satisfies the submission of the documentation requirement of Neb. Rev. Stat. §71-110:
- d. If any disciplinary action was taken against the applicant's license by another state, an official copy of the disciplinary action, including charges and disposition;
- e. If the licensee has been convicted of a felony or misdemeanor:
 - (1) Official Court Record, which includes charges and disposition;
 - (2) Copies of arrest records;
 - (3) A letter from the licensee explaining the nature of the conviction;
 - (4) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and
 - (5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.

114-006.02 First Notice: At least 30 days before August 1 of each even-numbered year, the

Department will send a renewal notice by means of regular mail to each licensee's last known address as noted in the records of the Department. It is the responsibility of the licensee prior to the renewal period to notify the Department of any name and/or address changes.

114-006.02A The renewal notice will specify:

1. The name of the licensee;
2. The licensee's last known address of record;
3. The license number;
4. The expiration date of the license;
5. The renewal fee pursuant to 172 NAC 114-011;
6. The number of continuing education hours required for renewal; and

7. The option to place the license on either inactive or lapsed status.

114-006.02B The licensee must apply for renewal by submitting to the Department:

1. The renewal notice;
2. The renewal fee;
3. The licensee's Social Security Number;
4. Attestation of completing 20 hours of continuing education for Occupational therapists and 15 hours for Occupational Therapy Assistants, earned within 24 months of the date of expiration or application for waiver of continuing competency requirements; and
5. Documentation relating to misdemeanor or felony conviction(s) or licensure revocation, suspension, limitation, or disciplinary action (if applicable).

114-006.02C If the licensee wishes to place his/her license on either inactive or lapsed status s/he must:

1. Request that his/her license be placed on inactive status by submitting to the Department:
 - a. The renewal notice with a check in the box marked inactive; and
 - b. The fee of \$25; or
2. Request that his/her license be placed on lapsed status by submitting to the Department:
 - a. The renewal notice with a check in the box marked lapsed.

114-006.02D The Department will notify the licensee in writing of the acceptance or denial of the request to allow the license to be placed on inactive or lapsed status.

114-006.03 Second Notice: The Department will send to each licensee who fails to renew his/her license or place the license on inactive or lapsed status in response to the first notice, a second notice of renewal pursuant to the requirements of 172 NAC 114-006.02 that specify:

1. That the licensee failed to pay the renewal fee;
2. That the license has expired;
3. That the licensee is subject to an administrative penalty pursuant to 172 NAC 114-014 if s/he practices after the expiration date;
4. That upon receipt of the renewal fee, together with the additional late fee of \$25, and documentation of continuing competency requirements within that time, no order of revocation will be entered; and
5. That upon failure to receive \$25 in addition to the regular renewal fee and documentation of completion of continuing competency requirements, the license will be revoked pursuant to 172 NAC 114-007.

114-006.04 The licensee must apply for renewal by submitting to the Department:

1. The renewal notice;
2. The renewal fee and the additional fee of \$25;
3. The licensee's Social Security Number.
4. Attestation by the licensee:
 - (a) That s/he has not practiced in Nebraska since the expiration of his/her license; or
 - (b) To the actual number of days practiced in Nebraska since the expiration of his/her license.
5. Attestation of completing 20 hours of continuing education for Occupational Therapists and 15 hours for Occupational Therapy Assistants, earned within 24 months of the date of expiration or waiver of continuing competency requirements; and
6. Documentation relating to misdemeanor or felony conviction(s) or licensure revocation, suspension, limitation or disciplinary action (if applicable).

114-006.05 If the licensee wishes to place his/her license on either inactive or lapsed status s/he must:

1. Request that his/her license be placed on inactive status by submitting to the Department:
 - a. The renewal notice with a check in the box marked inactive; and
 - b. The fee of \$25; or
2. Request that his/her license be placed on lapsed status by submitting to the Department:
 - a. The renewal notice with a check in the box marked lapsed.

114-006.06 The Department will notify the licensee in writing of the acceptance or denial of the request to allow the license to be placed on lapsed or inactive status.

114-006.07 When any licensee fails, within 30 days of expiration of a license, to pay the renewal fee, to submit documentation of continuing competency requirements and/or to pay

an additional fee of \$25 the Department will automatically revoke the license without further notice or hearing and will make proper record of the revocation.

114-006.08 Failure to meet the continuing competency requirement for renewal within 30 days of expiration of his/her license will constitute non-renewal of license, unless a waiver of continuing competency requirements is granted or the license is placed on inactive or lapsed status. When any licensee fails, within 30 days of expiration of a license, to meet the continuing competency requirements for renewal, and/or to pay an additional late fee of \$25, the Department will revoke the license after notice and opportunity for hearing. Hearings held before the Department will be conducted pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920, the Administrative Procedure Act and 184 NAC 1, the Rules of Practice and Procedure for the Department.

114.006.09 When the licensee has given notification to the Department that s/he desires to have the license lapse or be placed on inactive status upon expiration, 172 NAC 114-006.07 and NAC 114-006.08 will not apply.

114-006.10 The Department may refuse to renew a license for falsification of any information submitted for renewal of a license. The refusal must be made pursuant to Neb. Rev. Stat. §§ 71-149 to 71-155 and 184 NAC 1, the Rules of Practice and Procedure for the Department.

114-006.11 An individual who practices after expiration of his/her credential, is subject to assessment of an Administrative Penalty under 172 NAC 114-014, or such other action as provided in the statutes and regulations governing the credential.

114-007 LICENSURE/CERTIFICATION REVOCATION FOR FAILURE TO MEET RENEWAL REQUIREMENTS: The Department will revoke a license to practice Occupational Therapy when the licensee fails to meet the renewal requirements.

114-007.01 Revocation For Non-Payment of Renewal Fee

114-007.01A When a licensee fails to pay the required renewal fee, to submit documentation of continuing competency requirements and/or to pay an additional fee of \$25 and fails to request that his/her license be placed on either inactive or lapsed status within 30 days of its expiration, the Department will automatically revoke the license without further notice or hearing and will make proper record of the revocation.

114-007.01A1 The revocation notice must specify:

1. That the licensee was given a first and final notice of renewal requirements and the respective dates for these notices;
2. That the licensee failed to renew the license and to request that his/her license be placed on inactive or lapsed status;
3. That the Department has revoked the license or certification;
4. That the licensee or certificate holder has a right to appeal the revocation; and
5. That the licensee or certificate holder has a right to reinstatement of the license or certification.

114-007.02 Revocation for Failure to Meet Continuing Competency Requirements

114-007.02A When a licensee fails within 30 days of the expiration of his/her license to meet the continuing competency requirement for licensure renewal or to request that his/her license be placed on either inactive or lapsed status, the Department will revoke his/her license after notice and opportunity for a hearing.

114-007.02A1 The notice of failure to meet continuing competency requirements must specify that:

1. Licensee was given first and second notice of failure to meet the continuing competency requirement and the respective dates of each notice;
2. Licensee either failed to renew the license or to have his/her license timely placed on inactive or lapsed status;
3. The Department will revoke the license within 30 days of date of receipt of the notice unless the licensee requests in writing a hearing.
4. The licensee has a right to appeal the revocation; and
5. The licensee has a right to reinstatement of the license.

114-008 GROUND ON WHICH THE DEPARTMENT MAY DENY, REFUSE RENEWAL OF, OR DISCIPLINE A LICENSE

114-008.01 The Department will deny an application for a license when the applicant fails to meet the requirements for licensure pursuant to 172 NAC 114-003 or is found to be in violation of any of the provisions pursuant to 172 NAC 114-008.03.

114-008.02 The Department will refuse renewal of a license if the licensee fails to meet the requirements pursuant to 172 NAC 114-006 or in 172 NAC 114-008.03.

114-008.03 The Department may deny, refuse renewal of, limit, suspend, or revoke licenses for any of the following grounds:

1. Fraud, forgery, or misrepresentation of material facts, in procuring or attempting to procure a license, certificate, or registration.
2. Grossly immoral or dishonorable conduct evidencing unfitness or lack of proficiency sufficient to meet the standards required for practice of the profession in this state.
3. Habitual intoxication or dependence or failure to comply with a treatment program or an aftercare program entered into under the Licensee Assistance Program established pursuant to Neb. Rev. Stat. § 71-172.01.
4. Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction and which, if committed within this state, would have constituted a misdemeanor or felony under state law and which has a rational

connection with the applicant's, licensee's, certificate holder's, or registrant's fitness or capacity to practice the profession.

5. Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with manifest incapacity, (d) with gross incompetence or gross negligence or, (e) in a pattern of negligent conduct. Pattern of negligent conducts means a continued course of negligent conduct in performing the duties of the profession.
6. Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, narcotic drugs, physical disability, mental disability, or emotional disability.
7. Physical or mental incapacity to practice the profession as evidenced by a legal adjudication or a determination thereof by other lawful means.
8. Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a license, certificate or registration by a person not licensed, certified, or registered to do so.
9. Having had his/her license, certificate, or registration denied, refused renewal, limited, suspended, or revoked, or having had such license, certificate, or registration disciplined in any other manner pursuant to Neb. Rev. Stat. § 71-155 by another state or jurisdiction to practice Occupational Therapy, based upon acts by the applicant, licensee, certificate holder, or registrant similar to acts pursuant to 172 NAC 114-008. A certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, or registration or the taking of other disciplinary measures against it by another state or jurisdiction will be conclusive evidence.
10. Unprofessional conduct, which term includes all acts pursuant to Neb. Rev. Stat. § 71-148 and other acts which include but are not limited to:
 - a. Solicitation of professional patronage by agents or persons, popularly known as cappers or steerers, or profiting by the acts of those representing themselves to be agents of the licensee, certificate holder, or registrant;
 - b. Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured;
 - c. Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a patient/client;
 - d. Obtaining any fee for professional services by fraud, deceit, or misrepresentation including, but not limited to, falsification of third party claim documents;

- e. Cheating on or attempting to subvert the licensing or certification examination;
- f. Assisting in the care or treatment of a patient/client without the consent of such patient/client or his/her legal representative;
- g. The use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that such person is entitled to practice a system or mode of healing for which s/he is not licensed, certified, or registered;
- h. Willful betrayal of a professional secret except as otherwise provided by law;
- i. Making use of any advertising statements of a character tending to deceive or mislead the public;
- j. Advertising professional superiority or the performance of professional services in a superior manner;
- k. Failure to accurately represent his/her skills to a patient/client;
- l. Delegating to other personnel those patient/client related services when the clinical skills and expertise of an occupational therapist is required;
- m. Failure to decline to carry out occupational therapy services that have been requested when such services are believed to be contraindicated or unjustified;
- n. Committing any act which endangers patient/client safety or welfare;
- o. Failure to utilize appropriate judgement in administering safe Occupational Therapy practice;
- p. Failure to exercise technical competence in carrying out Occupational Therapy;
- q. Failure to follow policies or procedures implemented in the practice situation to safeguard patient care;
- r. Failure to safeguard the patient's dignity and right to privacy;
- s. Violating the confidentiality of information or knowledge concerning the patient;
- t. Failure to accurately record and report information or falsification or unauthorized destruction of patient records;

- u. Misappropriating supplies or personal items of a patient/client or agency;
 - v. Exercising undue influence on patients/clients to purchase equipment produced or supplied by a company in which the Occupational Therapist owns stock or has any other direct or indirect financial interest;
 - w. Failure to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensed professional;
 - x. Verbally or physically abusing patients.
 - y. Sexual Harassment: An Occupational Therapist must not under any circumstances engage in sexual harassment of patients.
 - (1) Sexual Harassment includes making unwelcome sexual advances, requesting sexual favors, and engaging in other verbal or physical conduct of a sexual nature as a condition of:
 - (a) The provision or denial of Occupational Therapy to a patient;
or
 - (b) For the purpose or effect of creating an intimidating, hostile, or offensive environment for the patient or unreasonably interfering with a patient's ability to recover.
 - z. Violating an assurance of compliance entered into under Neb. Rev. Stat. § 71-171.02;
 - aa. Failure to conform to the ethics of the profession as specified in the American Occupational Therapy Association's "Code of Ethics", a copy of which is attached hereto as Attachment K, and incorporated in these regulations pursuant to 172 NAC 114;
 - bb. Failure or departure from the standards of acceptable and prevailing practice in occupational therapy.
- 11. Use of untruthful or improbable statements, or flamboyant, exaggerated, or extravagant claims concerning such licensee's, certificate holder's, or registrant's professional excellence or abilities, in advertisements.
 - 12. Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act.
 - 13. Distribution of intoxicating liquors, controlled substances or drugs for any other than lawful purposes.

14. Willful or repeated violations of the Uniform Licensing Law or rules and regulations of the Department relating to the licensee's, certificate holder's, or registrant's profession.
15. Unlawful invasion of the field of practice of any profession mentioned in the Uniform Licensing Law which the licensee, certificate holder, or registrant is not licensed, certified, or registered to practice.
16. Practicing the profession of Occupational Therapy while his/her license, certificate or registration is suspended or is guilty of practicing such profession while his/her license to do so is suspended or is guilty of practicing such profession in contravention of any limitation placed upon his/her license, certificate, or registration.
17. When the applicant is found to be not qualified to practice the particular profession or occupation for which s/he is applying, or licensed because of physical or mental illness or physical or mental deterioration or disability.
18. Refusal of an applicant for a license or of a licensee to submit to a physical or mental examination request by the Board, pursuant to Neb. Rev. Stat. §§ 71-161.12 to 71-161.16 to determine his/her qualifications to practice or to continue in the practice of the profession or occupation for which application was made or for which s/he is licensed.

114-008.04 If the Department proposes to deny, refuse renewal of, limit, revoke, or suspend the license of any licensee other than for non-payment of renewal fee, the applicant or licensee will be given an opportunity for a hearing before the Department and will have the right to present evidence on his/her own behalf. Hearings before the Department will be conducted pursuant to the Administrative Procedure Act and 184 NAC 1, the Rules of Practice and Procedure for the Department.

114-009 RE-CREDENTIALING: This section applies to individuals previously issued a Nebraska credential who have lost the legal authority to practice in total or in part and who seek the authority to return to practice in Nebraska with a valid Nebraska credential.

114-009.01 Eligibility

114-009.01A An individual whose credential has been previously:

1. Placed on lapsed status;
2. Placed on inactive status;
3. Revoked for failure to meet the renewal requirements;
4. Suspended or limited for disciplinary reasons; or
5. Voluntarily surrendered or voluntarily limited for an indefinite period of time; may request, at any time, to be re-credentialed and re-authorized to practice under the credential pursuant to these regulations.

114.009.01B An individual whose credential has been revoked for disciplinary reasons may apply for reinstatement only after a period of two years has elapsed from the date of revocation.

114-009.01C An individual who practices prior to re-credentialing, is subject to:

1. Assessment of an Administrative Penalty pursuant to 172 NAC 114-014; and
2. Limitation or other sanction on the credential, or denial of the request to be re-credentialed and re-authorized to practice under the credential, and referral for prosecution for uncredentialed practice, as provided in the statutes and regulations governing the credential.

114-009.02 Requirements for Restoration from Lapsed Status: A person whose credential has been placed on lapsed status may have their credential restored from lapsed to active status by the Department upon proof to the Department that they meet the requirements Pursuant to 172 NAC 114-003.

114-009.02A if the Department has evidence that an applicant has practiced while his/her credential was lapsed, the Department may:

1. Assess an Administrative Penalty pursuant to 172 NAC 114-014;
2. Initiate disciplinary action against the lapsed credential;
3. Deny the request to restore the credential from lapsed to active status; or
4. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.

114-009.02B if the Department has evidence that an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:

1. Initiate disciplinary action against the lapsed credential;
2. Deny the request to restore the credential from lapsed to active status; or
3. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.

114-009.02C The Department will act within 150 days on all completed applications.

114-009.02D The applicant will be provided with notice and the opportunity for hearing pursuant to the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920 before any of the actions pursuant to 172 NAC 114-009.02A and 172 NAC 114-009.02B are final.

114-009.03 Requirements to Move a Credential from Inactive to Active Status: A person whose credential has been placed on inactive status may have his/her credential moved from

inactive to active status upon proof to the Department that they meet the following requirements:

1. Meet renewal requirements, including:
 - a. The continuing competency requirements; and
 - b. Paying the renewal fee and any other applicable fees;
2. Attest:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

114-009.04 Procedures for Moving from Inactive to Active Status: To move a credential from inactive status to active status, the applicant must submit the following to the Department:

1. A written application which contains the following information about the applicant:
 - a. Name;
 - b. Address;
 - c. Social Security Number; and
 - d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
 - e. A statement describing all:
 - (1) Felony or misdemeanor convictions during the time period since the credential was active;
 - (a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:
 - [1] Official Court Record, which includes charges and disposition;
 - [2] Arrest records;
 - [3] A letter from the applicant explaining the nature of the conviction;
 - [4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and
 - [5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.
 - (b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was active;
 - [1] If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and

- disposition; and
- (c) Disciplinary charges pending against any professional credential held by the applicant.
- f. Attestation that the continuing competency requirements for renewal have been met;
- 2. The renewal fee and any other applicable fees.
- 3. Attestation by applicant:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

114-009.04A If an applicant has practiced while his/her credential was inactive, the Department may:

- 1. Assess an Administrative Penalty pursuant to 172 NAC 114-014;
- 2. Initiate disciplinary action against the credential;
- 3. Deny the request to move the credential from inactive to active status; or
- 4. Move the credential to active status and impose limitation(s) or other sanctions on the credential.

114-009.04B If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:

- 1. Initiate disciplinary action against the credential;
- 2. Deny the request to move the credential from inactive to active status; or
- 3. Move the credential to active status and impose limitation(s) or other sanctions on the credential.

114-009.04C In either event pursuant to 172 NAC 114-009.04A or 172 NAC 114-009.04B, a notice and the opportunity for hearing will be given to the applicant.

114-009.04D The Department will act within 150 days on all completed applications.

114-009.05 Requirements for Reinstatement Within One Year Following Revocation for Failure to Meet the Renewal Requirements: An applicant for reinstatement who applies not more than one year following revocation for failure to meet renewal requirements must:

- 1. Meet the renewal requirements, including:
 - a. The continuing competency requirements; and
 - b. Paying the renewal fee, the late fee of \$35 and any other applicable fees;
- 2. Attest:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

114-009.06 Procedures for Reinstatement Within One Year Following Revocation for Failure to Meet the Renewal Requirements: To reinstate a credential not more than one year following revocation for failure to meet renewal requirements, the applicant must submit the following to the Department:

1. A written application which contains the following information about the applicant:
 - a. Name;
 - b. Address;
 - c. Social Security Number; and
 - d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
 - e. A statement describing all:
 - (1) Felony or misdemeanor convictions during the time period since the credential was active;
 - (a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:
 - [1] Official Court Record, which includes charges and disposition;
 - [2] Arrest records;
 - [3] A letter from the applicant explaining the nature of the conviction;
 - [4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and
 - [5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.
 - (b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was revoked;
 - [1] If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and
 - (c) Disciplinary charges pending against any professional credential held by the applicant.
 - f. Attestation that the continuing competency requirements for renewal have been met;
 2. The renewal fee, the late fee of \$35 and any other applicable fees.
 3. Attestation by the applicant:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

Effective Date
May 6, 2006

NEBRASKA HEALTH AND HUMAN SERVICES
REGULATION AND LICENSURE

172 NAC 114

- (1) If an applicant has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172 NAC 114-014 in which case a notice and opportunity for hearing will be sent to the applicant.
- (2) If an applicant has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 114-009.06B.

The Department will forward the application to the Board for its recommendation pursuant to Neb. Rev. Stat. § 71-110 (5).

114-009.06A The Board's recommendation to the Department may be to:

1. Reinstate the credential;
2. Reinstate the credential with terms, conditions or restrictions; or
3. Deny reinstatement.

114-009.06B Upon receipt of the Board's recommendation, the Department will, within 150 days, send to the applicant a written notice of the Department's response. The Department may:

1. Reinstate the credential: An Administrative Penalty may be assessed pursuant to 172 NAC 114-014 if warranted;
2. If the Department determines that the applicant has committed acts or offenses prohibited by Neb. Rev. Stat. §§ 71-147 or 71-148, the Department may:
 - a. Reinstate the credential with terms, conditions or restrictions. In such case the applicant will be provided notice and the opportunity for hearing before the Department pursuant to the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920. An Administrative Penalty may be assessed pursuant to 172 NAC 114-014 if warranted; or
 - b. Deny reinstatement: In such case the applicant will be provided notice and the opportunity for hearing before the Department pursuant to the

Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920.

114-009.07 Requirements for Reinstatement More Than One Year Following Revocation for failure to Meet the Renewal Requirements: An applicant for reinstatement who applies more than one year after revocation for failure to meet the renewal requirements must:

1. Petition the Board for reinstatement pursuant to Neb. Rev. Stat. § 71-161.05. The petition for reinstatement must be accompanied by:
 - a. Verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of

- b. the activities of the petitioner since the credential was revoked; and
Verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was revoked.
- 2. Meet the renewal requirements, including:
 - a. The continuing competency requirements; and
 - b. Paying the renewal fee, the late fee of \$75 and any other applicable fees.
- 3. Attest:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.

114-009.08 Procedures for Reinstatement More Than One Year Following Revocation for Failure to Meet Renewal Requirements: An applicant for reinstatement more than one year following revocation for failure to meet renewal requirements must submit to the Board:

- 1. A petition for reinstatement:
 - a. Stating the reason the petitioner believes his/her credential should be reinstated;
 - b. Accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was revoked; and verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was revoked.
 - c. Containing the following information about the petitioner:
 - (1) Name;
 - (2) Address;
 - (3) Social Security Number; and
 - (4) If the petitioner holds a professional credential in another state, a list of the state(s) and type of credential;
 - (5) A statement describing all:
 - (a) Felony or misdemeanor convictions during the time period since the credential was active;
 - [1] If the petitioner has been convicted of a felony or misdemeanor, provide copies of:
 - [a] Official Court Record, which includes charges and disposition;
 - [b] Arrest records;
 - [c] A letter from the petitioner explaining the nature of the conviction;
 - [d] All addiction/mental health evaluations and proof

- of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and
 - [e] A letter from the probation officer addressing probationary conditions and current status, if the petitioner is currently on probation.
 - (b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the petitioner during the time period since the credential was revoked;
 - [1] If any disciplinary action was taken against the petitioner's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and
 - (c) Disciplinary charges pending against any professional credential held by the petitioner.
 - (6) Attestation that the continuing competency requirements for renewal have been met.
- 2. The renewal fee, the late fee of \$75 and any other applicable fees.
- 3. Attestation by the petitioner:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.
 - (1) If a petitioner has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172 NAC 114-014 in which case a notice and opportunity for hearing will be sent to the petitioner.
 - (2) If a petitioner has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 114-009.08F.

114-009.08A The petition to recommend reinstatement will be considered at the next meeting of the Board that is held, but not earlier than 30 days after the petition is filed.

114-009.08B Any petition to recommend reinstatement of a credential will be conclusively acted upon by the Board within 180 days after the filing of a properly prepared petition and the necessary accompanying documents with the Board.

114-009.08C If the Board recommends reinstatement of the credential, no public hearing need be held on the petition.

114-009.08D Prior to any recommendation by the Board against reinstatement of the credential, an opportunity for a formal public hearing on the petition must be granted by the Board, if formally requested by the petitioner.

114-009.08D1 The petitioner's request for a formal hearing must be submitted

within 30 days of the Board's notification of an opportunity for a formal public hearing.

114-009.08E If the petitioner formally requests a formal public hearing or if the Board otherwise holds such a hearing, the petitioner will be given at least 30 days prior notice by sending to the petitioner a copy of the notice of hearing by certified or registered mail at his/her last known residence or business post office address as shown by the files or records of the Department or as otherwise known. Notice may be given to the petitioner by personal service. The hearing will be conducted pursuant to 172 NAC 1.

114-009.08F The Board will review the petition to recommend reinstatement and the record of any hearing held, and submits its recommendation regarding reinstatement and the record on which such recommendation is made to the Department within 180 days of receipt of the petition to recommend reinstatement.

114-009.08F1 If the Board recommends reinstatement of the credential, the Department may:

1. Accept the Board's recommendation and grant reinstatement of the credential.
2. If the Department determines that the Board's recommendation is: in excess of statutory authority; made upon unlawful procedure; unsupported by competent, material, and substantial evidence; or arbitrary or capricious, the Department may not accept the Board's recommendation and either:
 - a. Deny reinstatement of the credential, or
 - b. Grant reinstatement with terms, conditions, or restrictions.

114-009.08F2 If the Board recommends denial of reinstatement, the Board will send to the petitioner a written notice of the Board's recommendation. The petitioner may appeal the Board's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

114-009.08F3 If the Board recommends reinstatement with terms, conditions, or restrictions, the Department may:

1. Accept the Board's recommendation and grant reinstatement with terms, conditions, or restrictions; or
2. Not accept the Board's recommendation and either:
 - a. Deny reinstatement of the credential; or
 - b. Grant reinstatement of the credential.

114-009.08F4 The Department will, within 150 days of receipt of the Board's recommendation, send to the petitioner a written notice of the Department's reinstatement with or without terms, conditions, or restrictions or denial of reinstatement of the credential.

114-009.08F5 The petitioner may appeal the Department's decision to the

District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

114-009.09 Requirements to Reinstate a Credential Following Suspension, Limitation, or Revocation for Disciplinary Reasons: An applicant for reinstatement following suspension, limitation, or revocation for disciplinary reasons must meet the following requirements:

1. Petition the Board for reinstatement;
 - a. The petition for reinstatement must be accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked; and
 - b. Verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked.
2. Pay the reinstatement fee of \$75; and
3. If the credential was revoked or suspended, attest:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.

114-009.10 Procedures for Reinstatement Following Suspension, Limitation, or Revocation for Disciplinary Reasons: An applicant for reinstatement following suspension, limitation, or revocation for disciplinary reasons must submit to the Board:

1. A petition for reinstatement:
 - a. Stating the reason the petitioner believes his/her credential should be reinstated;
 - b. Accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked; and verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked.
 - c. Containing the following information about the petitioner:
 - (1) Name;
 - (2) Address;
 - (3) Social Security Number; and
 - (4) If the petitioner holds a professional credential in another state, a list of the state(s) and type of credential;
 - (5) A statement describing all:

- (a) Felony or misdemeanor convictions during the time period since the credential was suspended, limited, or revoked;
 - [1] If the petitioner has been convicted of a felony or misdemeanor provide copies of:
 - [a] Official Court Record, which includes charges and disposition;
 - [b] Arrest records;
 - [c] A letter from the petitioner explaining the nature of the conviction;
 - [d] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and
 - [e] A letter from the probation officer addressing probationary conditions and current status, if the petitioner is currently on probation.
 - (b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the petitioner during the time period since the credential was suspended, limited, or revoked;
 - [1] If any disciplinary action was taken against the petitioner's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and
 - (c) Disciplinary charges pending against any professional credential held by the petitioner;
- (6) Any continuing competency activities.
- 2. The reinstatement fee of \$75.
- 3. Attestation by the petitioner, if the credential was revoked or suspended:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.
 - (1) If a petitioner has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172 NAC 114-014 in which case a separate notice and opportunity for hearing will be sent to the petitioner.
 - (2) If a petitioner has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 114-009.10G.

114-009.10A The Board will make a recommendation to the Director regarding reinstatement following disciplinary action. In determining whether reinstatement should be recommended, the Board may:

- 1. Request the Department investigate all activities of the petitioner since the

disciplinary action was taken against him/her, including activities prohibited by Neb. Rev. Stat. §§71-147 and 71-148.

2. Require the petitioner to submit to a complete diagnostic examination by one or more physicians appointed by the Board, the petitioner being free also to consult a physician or physicians of his/her own choice for a complete diagnostic examination and make available a report or reports thereof to the Board;
3. Require the petitioner to pass a written, oral, or practical examination or any combination of such examinations; or
4. Require the petitioner to complete additional education.

114-009.10B The petition to recommend reinstatement will be considered at the next meeting of the Board that is held, but not earlier than 30 days after the petition is filed.

114-009.10C Any petition to recommend reinstatement of a credential will be conclusively acted upon by the Board within 180 days after the filing of a properly prepared petition and the necessary accompanying documents with the Board.

114-009.10D If the Board recommends reinstatement of the credential, no public hearing need be held on the petition.

114-009.10E Prior to any recommendation by the Board against reinstatement of the credential, an opportunity for a formal public hearing on the petition will be granted by the Board, if formally requested by the petitioner.

114-009.10E1 The petitioner's request for a formal hearing must be submitted within 30 days of the Board's notification of an opportunity for a formal public hearing.

114-009.10E2 If the petitioner had a hearing or an opportunity for a hearing on a prior petition to recommend reinstatement filed pursuant to Neb. Rev. Stat. § 71-161.04 within a period of two years immediately preceding the filing of the

current petition, the Board may grant or deny, without a hearing, the current petition to recommend reinstatement filed pursuant to Neb. Rev. Stat. § 71-161.04.

114-009.10F If the petitioner formally requests a formal public hearing or if the Board otherwise holds such a hearing, the petitioner will be given at least 30 days prior notice by sending to the petitioner a copy of the notice of hearing by certified or registered mail at his/her last known residence or business post office address as shown by the files or records of the Department or as otherwise known. Notice may be given to the petitioner by personal service. The hearing will be conducted pursuant to 172 NAC 1.

114-009.10G The Board reviews the petition to recommend reinstatement, any

examination or investigatory information and the record of hearing, if one was held. The Board will submit its recommendation to the Director within 180 days of receipt of the petition to recommend reinstatement.

114-009.10G1 If the Board recommends reinstatement of the credential:

1. The Board will send its recommendation to the petitioner by certified mail along with notification that the petitioner must file an application for reinstatement with the Director.
2. The petitioner must submit, to the Department, an application for reinstatement by the Director within 30 days of receipt of the Board's recommendation.
 - a. The application must include:
 - (1) Name of the petitioner; and
 - (2) Signed statement that the petitioner requests the Director to issue the credential pursuant to the Board's recommendation for reinstatement.
3. Upon receipt of the application for reinstatement from the petitioner, the Department will submit the following to the Director:
 - a. The application;
 - b. The written recommendation of the Board, including any finding of fact or order of the Board;
 - c. The petition submitted to the Board;
 - d. The record of hearing, if any;
 - e. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the petitioner.
4. The Director will issue a decision regarding reinstatement within 150 days of receipt of the petitioner's application for reinstatement. The Director's decision will be based upon a review of the record of the proceedings before the Board. The Director will not hold a second hearing. The Director may affirm, reverse or modify the Board's recommendation. A decision by the Director to reverse or modify the Board's recommendation will be based on finding that the Board's recommendation is: in excess of statutory authority, made upon unlawful procedure, unsupported by competent, material, and substantial evidence in view of the entire record, or arbitrary or capricious.
 - a. When the Director affirms, modifies or reverses the Board's recommendation for reinstatement, the Director will enter an Order setting forth the decision regarding reinstatement of the petitioner's credential. The order will be sent by certified mail

to the petitioner;

- b. If the petitioner does not accept the Director's decision, s/he may appeal such decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

114-009.10G2 If the Board recommends reinstatement of the credential with terms, conditions, or restrictions:

1. The Board will send its recommendation to the petitioner by certified mail along with notification that the petitioner must file an application for reinstatement with the Director.
2. The petitioner must submit, to the Department, an application for reinstatement by the Director within 30 days of receipt of the Board's recommendation.
 - a. The application must include:
 - (1) Name of the petitioner; and
 - (2) Signed statement that the petitioner requests the Director to issue the credential pursuant to the Board's recommendation for reinstatement.
3. Upon receipt of the application for reinstatement from the petitioner, the Department will submit the following to the Director:
 - a. The application;
 - b. The written recommendation of the Board, including any finding of fact or order of the Board;
 - c. The petition submitted to the Board;
 - d. The record of hearing, if any;
 - e. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the petitioner.
4. The Director will issue a decision regarding reinstatement within 150 days of receipt of the petitioner's application for reinstatement. The Director's decision will be based upon a review of the record of the proceedings before the Board. The Director will not hold a second hearing. The Director may affirm, reverse or modify the Board's recommendation. A decision by the Director to reverse or modify the Board's recommendation will be based on finding that the Board's recommendation is: in excess of statutory authority, made upon unlawful procedure, unsupported by competent, material, and substantial evidence in view of the entire record, or arbitrary or capricious.

- a. When the Director affirms, modifies or reverses the Board's recommendation for reinstatement, the Director will enter an Order setting forth the decision regarding reinstatement of the petitioner's credential. The order will be sent by certified mail to the petitioner;
- b. If the petitioner does not accept the Director's decision, s/he may appeal such decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

114-009.10G3 If the Board denies reinstatement, the Board will send to the petitioner a written notice of the Board's recommendation to deny reinstatement. The petitioner may appeal the Board's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

114-009.11 Procedures for Restoration of Credentials Voluntarily Surrendered or Limited for an Indefinite Period of Time

114-009.11A Credentials voluntarily surrendered or limited for an indefinite period of time pursuant to Neb. Rev. Stat. §71-161.11 may be restored at the discretion of the Department.

114-009.11A1 An applicant for restoration of a credential that was voluntarily surrendered or limited for an indefinite period of time must submit to the Department:

1. A written application which contains the following information about the applicant:
 - a. Name;
 - b. Address;
 - c. Social Security Number; and
 - d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
 - e. A statement describing all:
 - (1) Felony or misdemeanor convictions during the time period since the credential was active;
 - (a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:
 - [1] Official Court Record, which includes charges and disposition;
 - [2] Arrest records;
 - [3] A letter from the applicant explaining the nature of the conviction;
 - [4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and

- [5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.
- (2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was active;
 - (a) If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and
- (3) Disciplinary charges pending against any professional credential held by the applicant.
- f. Any continuing competency activities.
- g. Attest:
 - (1) That s/he has not practiced in Nebraska prior to the voluntary surrender of his/her credential; or
 - (2) To the actual number of days practiced if the applicant has practiced in Nebraska prior to the voluntary surrender of his/her credential.

114-009.11A2 If an applicant has practiced while his/her credential was voluntarily surrendered, the Department may:

- 1. Assess an Administrative Penalty pursuant to 172 NAC 114-014;
- 2. Initiate disciplinary action against the credential;
- 3. Deny the request to restore the credential; or
- 4. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.

114-009.11A3 If an applicant has committed any other violation of the statutes and regulations governing the credential while his/her credential was voluntarily surrendered or limited, the Department may:

- 1. Initiate disciplinary action against the credential;
- 2. Deny the request for restoration of the credential; or
- 3. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.

114-009.11A4 In either event pursuant to 172 NAC 114-009.11A2 or 172 NAC 114-009.11A3, a notice and the opportunity for hearing will be given to the applicant.

114-009.11A5 The Department will act within 150 days on all completed applications.

114-009.12 Procedures for Restoration of Credentials Voluntarily Surrendered or Limited for a Specific and Definite Period of Time

114-009.12A Credentials voluntarily surrendered or limited for a specific and definite period of time as agreed to between the holder and Department pursuant to Neb. Rev.

Stat. § 71-161.11, will be automatically restored at the expiration of that period of time.

114-009.12B If an individual has practiced while his/her credential was voluntarily surrendered for a specific and definite period of time, the Department may assess an Administrative Penalty pursuant to 172 NAC 114-014.

114-009.13 Credentials Voluntarily Surrendered or Limited Permanently

114-009.13A Credentials that are voluntarily surrendered or limited permanently pursuant to Neb. Rev. Stat. § 71-161.11 will not be restored.

114-009.14 Reapplication After Five Years Revocation: A person whose license has been revoked for non-payment of renewal fees and who has not requested reinstatement within five years of the date of revocation must reapply to the Department.

114-009.14A The applicant must meet the requirements for licensure that are in effect at the time of reapplication for licensure pursuant to 172 NAC 114-003; and 172 NAC 114-009.14B. Submit to the Department:

1. A complete application for a new license on a form that will be provided by the Department, a copy of which is provided as Attachment A. At the option of the applicant, s/he may apply by filling out Attachment A or by using an alternate format, which s/he prefers:
2. Documentation of meeting licensure requirements pursuant to 172 NAC-003; and
3. The required licensure fee.

114-010 CONTINUING COMPETENCY REQUIREMENTS FOR LICENSURE

114-010.01 General Requirements for Licensure: On or before August 1, 2002, and on or before August 1 of each even numbered year thereafter, each occupational therapist and each occupational therapy assistant who is in active practice and in the State of Nebraska must:

1. Complete continuing education hours to renew a license during the preceding 24 month period. Each occupational therapist must complete 20 hours of continuing education and each occupational therapy assistant must complete 15 hours of continuing education during the preceding 24 month period.
2. Be responsible for:
 - a. Maintaining until the next renewal period documentation of attendance at, or participation in, continuing education programs/activities and the program outline and/or objectives; and
 - b. Maintaining documentation of presentation of a continuing education program if the licensee is presenting a program.

3. If applicable, submit an application for waiver of the continuing competency requirement pursuant to 172 NAC 114-010.02.

114-010.01A Acceptable Continuing Education: In order for a continuing education activity to be accepted for renewal or reinstatement of a license, the continuing education activity must relate to occupational therapy and it may focus on research, treatment, documentation, management, or education.

114-010.01B A continuing education activity, except formal and informal self study, student supervision, and participation in research will be acceptable when:

1. It constitutes a formally organized and planned program of learning which directly contributes to the professional competency of the licensee;
2. The objectives of the continuing education activity relate to the practice of occupational therapy;
3. It has a date, location, course title, number of contact hours, signed certificate of attendance and is open to all licensees;
4. The instructor has specialized experience or training to meet the objectives of the course; and
5. One hour of credit will be awarded for each hour of attendance. Credit will not be awarded for breaks or meals.

114.010.01C The Board does not pre-approve continuing education programs but will accept as continuing education for renewal of a license or reinstatement of a license the following continuing education activities:

1. Programs at State and National association meetings e.g., a meeting of the Nebraska or other state occupational therapy associations and/or the American Occupational Therapy Association. A licensee's documentation must include a certificate of attendance, and a program outline and/or objectives;
2. Workshops, seminars, and/or conferences where the content of the continuing education activity relates to occupational therapy whether the subject is research, treatment, documentation, or education management, which includes monitored videotapes, and inservice programs. A licensee's documentation must include a certificate of attendance, and a program outline and/or objectives;
3. University or college sponsored courses where the content of the course relates to occupational therapy whether the subject is research, treatment, documentation, education, or management. A licensee must provide documentation of successfully completing the course. A licensee's documentation must include an official transcript, and a program outline and/or objectives;

4. Formal self study where the content of the self study activity relates to occupational therapy whether the subject is research, treatment, documentation, education, or management, e.g. videotapes, internet courses, correspondence courses and/or AOTA self studies. Licensees may complete a maximum of 12 hours of continuing education by self-study each 24 month renewal period. The self-study program must have a testing mechanism. A licensee's documentation must include a certificate of completion, and a program outline and/or objectives;
5. Management courses which pertain to the practice of occupational therapy
An occupational therapist may complete a maximum of ten hours of continuing education utilizing management courses each 24 month renewal period. An occupational therapy assistant may complete a maximum of seven and one half hours of continuing education utilizing management courses each 24 month renewal period. A licensee's documentation must include a certificate of attendance and a program outline and/or objectives;
6. Student supervision by an occupational therapist or occupational therapy assistant. One contact hour is earned for being a primary direct clinical supervisor for each student's entire level II fieldwork experience. Licensee may receive a maximum of two contact hours of continuing education by supervising a student each 24 month renewal period. A licensee's documentation must include a copy of the signature page of the completed fieldwork evaluation form for each supervised student;
7. Participation in research or other scholarly activities that result in professional publication or acceptance for publication that relate to occupational therapy. Four contact hours will be received for each publication. Licensees may earn up to a maximum of ten contact hours of continuing education each 24 month renewal period for authorship, editorship, co-authorship, co-editorship, or all of these, of a juried publication relating to occupational therapy. A licensee's documentation must include a copy of the final publication or verification of publication e.g., title page and table of contents;
8. Informal self study: A licensee may earn up to a maximum of two contact hours of continuing education each 24 month renewal period for completion of the following activities or a combination of such activities:
 - a. Reading related to occupational therapy practice;
 - b. Observing other occupational therapists;
 - c. Viewing videotapes without a supervisor; and
 - d. Quality assurance or peer review studies.

A licensee's documentation when reading or viewing videotapes must include the name of the article, book or videotape and a brief synopsis of

what was learned. Documentation, when observing other therapists and participating in quality assurance and peer review studies, must include a statement from the licensee explaining what was learned; and

9. Nationally recognized specialty certification examinations: A licensee will earn 20 contact hours of continuing education each 24 month renewal period for successful completion of a nationally recognized specialty certification examination related to an area of advanced practice in the field of occupational therapy. A licensee's documentation must include a copy of the certification.

114-010.01D One hour credit will be awarded for each hour of scientific presentation by a licensee at workshops, seminars, in-service training, conferences, or guest lectures which relate to the practice of occupational therapy. A licensee may receive continuing education credit for only the initial presentation during a renewal period. Credit will not be given for subsequent presentations of the same program. A licensee may complete a maximum of four hours of continuing education credit for presentations in a 24 month renewal period. A licensee's documentation must include the presentation outline, course objectives, date, location, time, and type of audience.

114-010.01E Non-acceptable Continuing Education: Continuing education credit will not be awarded for programs where the content does not relate to occupational therapy whether the subject is research, treatment, documentation, education, or management, including but not limited to:

1. Medical terminology courses.
2. Occupational therapy on-the-job training.
3. Occupational therapy orientation programs, including orientation to new policies, procedures, equipment, forms, responsibilities, services, etc.
4. CPR or other related training.

114-010.02 Waiver of Continuing Competency Requirements: The Department, on the recommendation of the Board, may waive the continuing competency requirements, in part or in total, for any two year licensing period when a licensee submits documentation that circumstances beyond his/her control prevented completion of such requirements.

114-010.02A Such circumstances must include situations in which:

1. The licensee holds a Nebraska license but is not residing or practicing his/her profession in Nebraska;
2. The licensee has served in the regular armed forces of the United States during part of the 24 months immediately preceding the license renewal date;
3. The licensee has submitted proof that he/she was suffering from a serious or disabling illness or physical disability which prevented completion of the required number of continuing education hours during the 24 months

preceding the license renewal date;

4. The licensee was first licensed within the 24 months immediately preceding the license renewal date;
5. The licensee successfully completed two or more semester hours of formal credit instruction biennially offered by an accredited school or college which contributes to meeting the requirements of an advanced degree in a postgraduate program relating to occupational therapy; and
6. Other circumstances beyond the licensee's control prevented completion of the continuing education requirements.

114-010.02B Application for Waiver of Continuing Competency Requirements: Any licensee who seeks a waiver of continuing competency requirements, in part or in total, for any two year licensing period must apply to the Department. The Department, on the recommendation of the Board, may waive continuing competency requirements in part or in total for any two year period. The licensee must submit:

1. A complete application for waiver of continuing competency on a form sent by the Department and referred to as Attachment M or at the option of the applicant, s/he may apply by using an alternate format which s/he prefers. Only applications which are complete will be considered, and the application must be received by the Department on or before August 1 of the year the license is due to be renewed; and
2. Documentation of the circumstances beyond the licensee's control which prevented completion of continuing competency requirements pursuant to 172 NAC 114-010.01, item 1 must include the following:
 - a. If the licensee holds a Nebraska license but is not residing or practicing in Nebraska, s/he must mark the appropriate response in the waiver section of Attachment M.
 - b. If the licensee has served in the regular armed forces of the United States during part of the 24 month immediately preceding the license renewal date, s/he must mark the appropriate response in the waiver section of Attachment M and submit official documentation stating the dates of such service.
 - c. If the licensee has suffered from a serious or disabling illness or physical disability which prevented completion of the continuing competency requirements during the 24 months preceding the license renewal date, s/he must mark the appropriate response in the waiver section of Attachment M and submit a statement from a treating physician(s) stating that the licensee was injured or ill, the duration of the illness or injury and of the recovery period, and that

the licensee was unable to obtain continuing competency requirements during that period.

- d. If the licensee was first licensed within 24 months immediately preceding the license renewal date, s/he must mark the appropriate response in the waiver section of Attachment M and list the date said license was issued.
- e. If the licensee successfully completed two or more semester hours of formal credit instruction biennially offered by an accredited school or college which contributes to meeting the requirements of an advanced degree in a postgraduate program relating to occupational therapy, s/he must mark the appropriate response in the waiver section of Attachment M and submit official documentation showing completion of such hours.
- f. If the licensee has other circumstances beyond his/her control that prevented him/her from obtaining the required continuing competency requirements s/he must mark the appropriate response in the waiver section of Attachment M and submit documentation verifying such circumstances.

114-010.02C The Department, on recommendation of the Board, may grant or deny, in part or in total, an application for waiver of continuing competency requirements, upon proof that circumstances beyond the applicant's control prevented completion of such requirements.

114-010.02C1 When the Department determines to deny an application for waiver of continuing competency requirements, it must send to the applicant by certified mail to the last name and address of record in the Department, a notice setting forth the reason for the denial determination.

114-010.02C1a The applicant has 30 days from the date of receipt of the denial notice to make a written request to the Department for an appeal.

The appeal will be conducted pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920, The Administrative Procedure Act and 184 NAC 1 of the Rules of Practice and Procedure for the Department.

114-010.02C1b The Department will issue at the conclusion of the appeal under 184 NAC 1, a final order setting forth the results of the appeal.

114-010.02C2 When the Department determines to grant a waiver of continuing competency requirements, the applicant will be notified within 30 days of receipt of the application.

114-010.03 Audit of Continuing Competency Requirements: The Board must select, either during or after renewal, in a random manner, a sample of the licensee's renewal applications

for audit of continuing competency requirements. Each licensee will be responsible for maintaining in his/her own personal files such certificates or records of credit from continuing education activities received from continuing education providers. Licensees selected for audit will be required to produce documentation of his/her attendance at those continuing education activities including program outline and/or course objectives attested to his/her renewal application.

114-010.03A The Department will send to each licensee selected a notice of audit.

114-010.03B When selected for audit, the licensee will provide satisfactory documentation of attendance at or participation in continuing education activities and the program outline and/or objectives attested to on the licensee's affidavit pursuant to 172 NAC 114-010.01 item 2.

114-010.03C The Board reserves the right to audit the continuing education affidavit of any licensee by notifying the licensee and requesting the licensee to produce within 30 days of mailing, documents verifying attendance at continuing education activities.

114-010.03D Continuing education for which no documentation is produced will not be included in the calculation of the total number of continuing education hours.

114-010.03E Failure to comply with the audit may be grounds for non-renewal or revocation of the license.

114-011 SCHEDULE OF FEES: The following fees have been set by the Department.

1. Initial License Fee: By an applicant for a license to practice as an occupational therapist, the fee of \$75 and the Licensee Assistance Program fee of \$1 per year for each year remaining during the current biennial renewal period.

Initial License Fee: By an applicant for a license to practice as an occupational therapy assistant, the fee of \$65 and the Licensee Assistance Program fee of \$1 per year for each year remaining in the biennial renewal period.

2. Proration of Initial License Fee: For issuance of a license that will expire within 180 days after its initial issuance date, a fee of \$25 and the Licensee Assistance Program fee of \$1.
3. Temporary Permit Fee: By an applicant for a temporary permit or extension of a temporary permit to practice as an occupation therapist or an occupation therapy assistant or the fee of \$25.
4. Physical Agent Modalities Fee: By an applicant for certification to apply physical agent modalities:
 - a. Deep Thermal Agents Modality Certification the fee of \$86.
 - b. Electrotherapeutic Agents Modality Certification the fee of \$86.
 - c. Superficial Thermal Agents Modality Certification the fee of \$86.

- d. A combination of Modalities Certification the fee of \$86.
- 5. License Renewal Fee: By an applicant for a renewal on a biennial basis of a license to practice as an occupational therapist, the fee of \$75 and the License Assistance Program fee of \$2.
- 6. License Renewal Fee: By an applicant for a renewal on a biennial basis of a license to practice as an occupational therapy assistant, the fee of \$65 and the Licensee Assistance Program fee of \$2.
- 7. Inactive License Status Fee: By an applicant to have his/her license placed on inactive status, the fee of \$25.
- 8. Renewal Late Fee: By an applicant for renewal on a biennial basis of a license, who fails to pay the renewal fee on or before the expiration date of his/her license, the fee of \$25 as a late fee in addition to the renewal fee.
- 9. Certification of License/Certificate Fee: For issuance of a certification of an occupational therapy or occupational therapist assistant license the fee of \$25. The certification includes information regarding:
 - a. The basis on which a license was issued;
 - b. The date of issuance;
 - c. Whether disciplinary action has been taken against the license; and
 - d. The current status of the license.
- 10. Verification of License/Permit Fee: For issuance of a verification of a license/permit the fee of \$5. The verification includes written confirmation as to whether a license or permit was valid at the time the request was made.
- 11. Duplicate License/Permit Fee: For a duplicate of original license or permit document or reissued license or permit, the fee of \$10.
- 12. Administrative Fee: For a denied license or permit or a withdrawn application, the administrative fee of \$25 will be retained by the Department, except if the license/permit fee is less than \$25, the fee will be forfeited and an examination fee will not be returned.
- 13. Reinstatement Late Fee: For reinstatement of a license or certificate for failure to meet renewal requirements:
 - a. Within one year, the fee of \$35 in addition to the renewal fee.
 - b. After one year of revocation, the fee of \$75 in addition to the renewal fee.
- 14. Reinstatement Fee: For reinstatement of an Occupational Therapy license following suspension, limitation, or revocation for disciplinary reasons, the fee of \$75.

114-012 ROLE DELINEATION FOR OCCUPATIONAL THERAPY ASSISTANT: A licensed occupational therapy assistant may perform the following duties while under the supervision of a licensed occupational therapist or while consulting with a licensed occupational therapist:

114-012.01 Explain overall occupational therapy services to client, family, or others who have legitimate interest in the case;

114-012.02 Solicit referrals from appropriate sources or acknowledge referrals received before or after initial screening for the purpose of initiating occupational therapy services by:

1. Responding to a request for service by relaying information or formal referral to the licensed occupational therapist; and
2. Entering cases as appropriate to standards of facility, department and profession when authorized by supervising occupational therapist.

114-012.03 Assess need for, nature of, and estimated time of treatment, determining the needed coordination with other persons involved and documenting the activities by:

1. Screening client to determine client's need for occupational therapy services. This may occur before or after referral by:
 - a. Obtaining and reviewing written information about the client from medical records, school records, therapist records, etc.;
 - b. Interviewing client, family, or others with legitimate interest in the case using a structured guide to obtain general history and information about:
 - (1) Family history, self-care abilities, academic history, vocational history, play history, and leisure interest and experiences; and
 - c. Organizing, summarizing, and recording data collected by occupational therapy assistant and reporting such data to licensed occupational therapist.
2. Observing client while engaged in individual and/or group activity to collect general data and report on independent living/daily living skills, selected sensorimotor skills, cognitive skills, and psychosocial skills;
3. Administering standardized and criterion referenced tests as directed by licensed occupational therapist to collect data on independent living/daily living skills and performance, sensorimotor developmental status, and cognitive skills and performance in the area of orientation;
4. Summarizing, recording, and reporting own evaluation data to licensed occupational therapist;
5. Assisting with the evaluation of the data collected; and

6. Reporting evaluation data as determined by the licensed occupational therapist to other appropriate persons.

114-012.04 Assist with the identification and documentation of achievable treatment goals to:

1. Develop, improve, and/or restore the performance of necessary functions; compensate for dysfunction, and/or minimize debilitation in the areas of:
 - a. Independent living/daily living skills and performance;
 - b. Sensorimotor skills and performance in gross and fine coordination, strength and endurance, range of motion, and tactile awareness;
 - c. Cognitive skills and performance; and
 - d. Psychosocial skills and performance.

114-012.05 Assist in the identification and documentation of treatment methods by:

1. Selecting occupational therapy techniques, and media, and determining sequence of activities to attain goals in areas designated pursuant to 172 NAC 114-012.04 item 1 by:
 - a. Analyzing activities in reference to client's interests and abilities, major motor processes, complexity, steps involved, and extent to which it can be modified or adapted;
 - b. Adapting techniques/media to meet client need; and
 - c. Discussing occupational therapy treatment plan with client, family, others with legitimate interests and staff.

114-012.06 Assist with implementation or modification of a treatment plan by the use of specific activities or methods which improve or restore performance of necessary functions; compensate for dysfunction; and/or minimize debilitation. The occupational therapy assistant, under the direction of a licensed occupational therapist, will:

1. Engage client in purposeful activity, in conjunction with therapeutic methods, to achieve goals identified in the treatment plan in the following areas:
 - a. Independent living/daily living skills which include physical, psychological, emotional, work, and play;
 - b. Sensorimotor components which include neuromuscular, tactile awareness, and postural balance;
 - c. Cognitive components which include orientation and conceptualization;
 - d. Therapeutic adaptation which includes orthotics, and assistive/adaptive equipment; and
 - e. Prevention which includes energy conservation, joint protection/body mechanics, positioning and coordination of daily living skills.
2. Orient family and others about the activities being utilized in the treatment plan;

3. Provide instruction to client, family, and others with a legitimate interest in how to implement the home program developed by the licensed occupational therapist; and
4. Observe medical and safety precautions.

114-012.07 Assist in determining the need to terminate occupational therapy services when the client has achieved the treatment plan goals and/or has achieved maximum benefit from the services. The following steps should be taken:

1. Discuss need for treatment plan discontinuation with licensed occupational therapist;
2. Assist in preparing occupational therapy discharge plan by recommending adaptations to client's everyday environment;
3. Assist in identifying community resources; and
4. Assist in summarizing and documenting outcome of the occupational therapy treatment plan.

114-012.08 Participate in planning, organizing, and delivery of occupational therapy services by:

1. Planning daily schedule according to assigned workload;
2. Preparing and maintaining work setting, equipment, and supplies;
3. Ordering supplies and equipment according to established procedures;
4. Maintaining records according to Department procedure;
5. Ensuring safety and maintenance of program areas and equipment; and
6. Assisting with compiling and analyzing data of total occupational therapy service.

114-013 REQUIREMENTS FOR CONSULTING WITH OR SUPERVISING AN OCCUPATIONAL THERAPY ASSISTANT: An occupational therapy assistant may assist in the practice of occupational therapy under the supervision of or in consultation with an occupational therapist.

114-013.01 If an occupational therapist is supervising or consulting with an occupational therapy assistant, s/he must meet the following standards:

1. Evaluate each patient prior to treatment by the occupational therapy assistant;
2. Develop a treatment plan outlining which elements have been delegated to the occupational therapy assistant;
3. Monitor patient's progress;
4. Approve any change in the occupational therapy treatment plan;
5. Ensure that the occupational therapy assistant is assigned only to duties and responsibilities for which s/he has been specifically trained and is qualified to perform;
6. Review all documentation written by the occupational therapy assistant;
7. Interpret the results of tests which are administered by the occupational therapy assistant; and
8. Evaluate the treatment plan and determine termination of treatment.

114-013.02 An occupational therapist supervising an occupational therapy assistant must, in addition to the standards pursuant to 172 NAC 114-003.01, provide the following:

1. A minimum of four hours per month of on-site supervision if an occupational therapy assistant has more than one year satisfactory work experience as an occupational therapy assistant; or
2. A minimum of eight hours per month of on-site supervision if an occupational therapy assistant has less than one year satisfactory work experience as an occupational therapy assistant.

114-014 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists that a person or entity practices without a license or certificate. Practice without a credential for the purpose of this regulation means practice:

1. Prior to the issuance of a license or certificate;
2. Following the expiration of a license; or
3. Prior to the reinstatement of a license.

114-014.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without a license or certificate:

1. The person admits to engaging in practice;
2. Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
3. Billing or payment records document the provision of service, care, or treatment by the person;
4. Service, care, treatment records document the provision of service, care, or treatment by the person;
5. Appointment records indicate that the person was engaged in practice;
6. The person or entity opens a business or practice site and announces or

advertises that the business or site is open to provide service, care, or treatment.

For purposes of this regulation prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.

114-014.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a license or certificate. To assess such penalty, the Department will:

1. Provide written notice of the assessment to the person. The notice must specify:
 - a. The total amount of the administrative penalty;
 - b. The evidence on which the administrative penalty is based;
 - c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;

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- d. That the Department will within 30 days following receipt of payment of the administrative penalty, transmit the penalty to the State Treasurer for credit to the Permanent School Fund; and
 - e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property.
2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.

114-014.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920 and the Department's rules and regulations adopted pursuant to these statutes.

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Forms A through M may be obtained by contacting the Credentialing Division.

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<http://www.hhs.state.ne.us/crl/profindex1.htm>